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9
10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**
12

13 In re:

14 MELISSA MARIE WILKERSON,
15
16 Debtor.

Case No.: 25-40564-CN
Chapter: 13

17 **NBS DEFAULT SERVICES, LLC’S**
18 **RESPONSE TO SUPPLEMENTAL**
19 **DECLARATIONS OF DEBTOR’S**
20 **COUNSEL FILED IN SUPPORT OF**
21 **MOTION FOR SUMMARY JUDGMENT**
22 **ON DEBTOR’S MOTION FOR DAMAGES**
23 **FOR VIOLATION OF THE AUTOMATIC**
24 **STAY**

25 NBS Default Services, LLC (“NBS”), respectfully submits this response to the
26 Supplemental Declarations of Debtor’s Counsel [ECF #s 98 & 99], filed in support of Debtor’s
27 Motion for Summary Judgment on Debtor’s Motion for Damages for Violation of Automatic
28 Stay [ECF # 83] (the “Motion”) in the above-listed chapter 13 bankruptcy (the “Bankruptcy”).

1 **A. ATTORNEY’S FEES, IF AWARDED AT ALL, SHOULD BE LIMITED TO**
2 **AT MOST THE REASONABLE ATTORNEY WORK COMPLETED PRIOR TO**
3 **DEBTOR’S COUNSEL’S DISCOVERY OF THE ACTUAL FILING TIME**

4 Both attorneys for Debtor admit in their declarations that they were made aware of the
5 9:06 am filing time by May 20, 2025. While no explanation is provided as to why neither
6 counsel discovered this critical fact until *nearly two months after the foreclosure sale*, this is two
7 days before the Motion for Sanctions was filed. Thus for two full days, as the Motion for
8 Sanctions was being prepared (and additional attorney’s fees and costs were being incurred),
9 Debtor’s counsel admittedly knew of the earlier commencement of the bankruptcy, which would
10 make the underlying sale null and void. Debtor’s counsel also knew that NBS was not aware of
11 the earlier filing time, due to prior written and verbal communications with NBS’s counsel. In
12 other words, Debtor’s counsel knew that the sale was null and void based on the earlier
13 bankruptcy filing time for at least two full days before the filing of the Motion for Damages, yet
14 they never notified NBS of that critical fact. And this in light of Debtor’s bankruptcy counsel
15 previously representing to NBS that the actual filing time was 9:19 am – after the foreclosure
16 sale was cried. Not only did Debtor’s counsel never correct this misrepresentation, but they
17 never notified NBS directly at all ---- until NBS received the Motion for Damages. The Motion
18 for Damages was never emailed to NBS. It was sent by standard delivery mail service, was not
19 delivered until Saturday, May 24, 2025 (during the Memorial Day weekend), and was not
20 opened until May 27, 2025 (the day after the Memorial Day holiday), which was seven days after
21 Debtor’s counsel admittedly knew about the earlier filing date. [See ECF #s 54, Par. 8, Ex. C, 98
22 & 99].

23
24 Regarding damages for a stay violation, “most courts apply a reasonableness analysis[,]”
25 which “requires that the injured party be awarded the entire amount of actual damages
26 *reasonably incurred* as a result of a violation of the automatic stay. *In re Roman*, 283 B.R. 1,
27 11 (B.A.P. 9th Cir. 2002) (emphasis original) (citation omitted). However, “there is also a
28 consensus in the case law that, in determining reasonable damages [for a stay violation], the

1 bankruptcy court must examine whether the debtor could have mitigated the damages.” *Id.* at
2 12. In determining the appropriate amount of attorneys' fees to award as a sanction, courts
3 looks to two factors: “(1) what expenses or costs resulted from the violation and (2) what
4 portion of those costs was reasonable, as opposed to costs that could have been mitigated.” *Id.*

5 Finally, “[c]ourts especially scrutinize cases where the debtor's only injuries are those
6 incurred in litigating the motion for sanctions, and where there exist no circumstances
7 warranting punitive damages.” *Id.* Further, regarding punitive damages, a debtor must prove
8 egregious conduct and establish some showing of a reckless or callous disregard for the law or
9 rights of others. *In re Koeberer*, 632 B.R. 680, 691 (B.A.P. 9th Cir. 2021) [citing *Stinson v.*
10 *Cook Perkiss & Lew, APC (In re Stinson)*, 128 F. App'x 30, 31-32 (9th Cir. 2005)]. In fact, “no
11 punitive damages should be awarded in the absence of actual damages ... [because] the
12 automatic stay afforded by section 362 is intended to be a shield protecting debtors and their
13 estates, and **should not be used as a sword for their enrichment** ... [and] [t]he incurrence of
14 actual damage, a measurable event, serves as a basis for a determination of an appropriate
15 punitive damage award. Where there is no actual damage, such measure does not exist”) *Id.*
16 [citing and quoting *McHenry v. Key Bank (In re McHenry)*, 179 B.R. 165, 168 (9th Cir. BAP
17 1995)]. [Emphasis added.]

18 As an initial matter, had Debtor simply let NBS know that the filing time was at 9:06 am
19 – that the sale was essentially null and void – before starting and/or completing any work on the
20 Motion for Damages, the attorney’s fees incurred for such Motion could have been completely
21 avoided. Again, Debtor’s counsel argues that it was the Motion for Damages itself that caused
22 the foreclosure sale cancellation and not the filing time of 9:06 am. However, not only is this
23 factually incorrect, it ignores Debtor’s *duty to mitigate damages*. Debtor alone had knowledge
24 of the new facts regarding the earlier filing time and *still had a duty and obligation* to afford the
25 opportunity for NBS to review this new and important information before drafting or filing the
26 Motion for Damages or the Motion for Summary Judgment. Debtor failed to do so and, thus,
27 should not get attorney fees for the Motion for Sanctions or any of the fees incurred thereafter.
28 It would make no sense for NBS to proceed with a foreclosure sale (and to incur its own

1 attorney's fees and costs) if it had known shortly after the sale that a bankruptcy petition was
2 filed *before* the sale was cried, essentially making the sale null and void as a matter of law.

3 It is without dispute that the foreclosure sale was promptly cancelled after the filing of
4 the Motion for Damages was filed, and this is because the Motion communicated **for the very**
5 **first time the actual bankruptcy filing date**. No trustee's deed was ever recorded (or even
6 prepared). Thus, in the event the Court is even inclined to award the Debtor any attorney's fees,
7 the fees should be limited to the reasonable work completed up until May 20, 2025, the date
8 when Debtor's counsel admittedly became aware of the actual filing time, which conflicted with
9 the prior misrepresentation, yet failed to notify NBS of the same. Debtor's Motion for Damages
10 seemingly alleges total fees and costs of \$17,977.50, many of which were undoubtedly incurred
11 after Debtor's counsel became aware of the actual filing date, yet the Declarations of counsel
12 recently filed allege total fees and costs of \$69,026.50. Thus, even if Debtor's counsel were
13 really not aware of the actual filing time before May 20, 2025, the great majority of their total
14 fees and costs were still incurred after they knew of the actual filing time (and did nothing).

15 Finally, NBS once again notes that Debtor has no 'actual damages' outside of attorney's
16 fees, which does not provide a basis for punitive damages. Debtor has provided no evidence of
17 any emotional or mental distress, or alleged any specific financial damages aside from
18 attorney's fees and costs. Thus, the Motion fails to establish any basis for punitive damages, as
19 there is no showing of reckless or callous behavior by Defendants. *Cf. In re Roman, supra*, 283
20 B.R. at 13:

21 Thus, in the event the Court is inclined to award any attorneys' fees to the Debtor, NBS
22 requests that the award be capped at reasonable fees and costs up to the discovery of the earlier
23 filing time (purportedly) on May 20, 2025, or the amount alleged in the initial Motion for
24 Damages at most.

25
26 DATED: December 8, 2025

WRIGHT, FINLAY & ZAK, LLP

/s/ Arnold L. Graff

Arnold L. Graff, Esq.

Attorneys for Respondent.

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Attorney for Respondent,
NBS DEFAULT SERVICES, LLC

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

In re:

MELISSA MARIE WILKERSON,

Debtor.

BK Case No.: 25-40564-CN
Chapter: 13

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 280, Newport Beach, California 92660.

On 12/9/2025, I served the foregoing document described as **(1) NBS DEFAULT SERVICES, LLC'S RESPONSE TO SUPPLEMENTAL DECLARATIONS OF DEBTOR'S COUNSEL FILED IN SUPPORT OF MOTION FOR SUMMARY**

1 **JUDGMENT ON DEBTOR'S MOTION FOR DAMAGES FOR VIOLATION OF THE**
2 **AUTOMATIC STAY AND (2) CERTIFICATE OF SERVICE** on the interested parties in this

3 action as follows:

4 [X] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed
5 in the United States mail at Las Vegas, Nevada. I am readily familiar with the firm's business
6 practice for collection and processing of correspondence for mailing with the U.S. Postal Service
7 pursuant to which practice the correspondence is deposited with the U.S. Postal Service the same
8 day in the ordinary course of business. **See attached service list.**

9 [X] (BY ELECTRONIC SERVICE) Pursuant to CM/ECF System, registration as a
10 CM/ECF user constitutes consent to electronic service through the Court's transmission facilities.
11 The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel
12 of record listed above who are registered with the Court's EC/ECF system. **See attached service**
13 **list.**

14 [X] (FEDERAL) I declare that I am employed in the office of a member of the bar of
15 this court at whose direction the service was made.

16 I declare under penalty of perjury of the laws of the United States that the foregoing is true
17 and correct. Executed on 12/8/2025, at Newport Beach, California.

18 /s/ Jackie Powell

19 JACKIE POWELL
20
21
22
23
24

ADDITIONAL SERVICE INFORMATION

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):

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